

HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b))

Description of the case.

A.O. No. 453 of 2004

Oriental Insurance Co. Ltd.

Appellant

Versus

Smt. Sarojini Garg & others

Respondents

Approved for reporting.

Not approved for reporting

Date of decision 27.09.2006.

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal from Order No. 453 of 2004

Oriental Insurance Company Ltd; through its
Divisional Manager, Nainital Road, Haldwani
District Nainital Appellant

versus

1. Smt. Sarojini Garg w/o late Sri Raj Ratan Garg
2. Km. Abha Garg d/o late sri Raj Ratan Garg, Both
residents of Shashi Vihar, Near Uttaranchal Ayurvedic
College, Dehradun
3. Col. R.S. Malik s/o Sri Tara Singh r/o 54 Indra Nagar
Colony, Dehradun
4. Smt. Sudha goel w/o Sri Sant Kumar Goel C/o
Meenakshi Photo Studio, Choti Holi, Khurja
5. Smt. Pratibha Kamboj w/o Dr. A.K. Kamboj, R/o Doon
School Campus, Dehradun
6. Pradeep Garg s/o late Sri Raj Ratan r/o 497 Hira
Colony, Sikandrabad, Bulandshar.
7. Sanjeev Garg s/o late Sri Raj Ratan r/o 497 Hira
colony, Sikandrabad Bulandshar
8. Anurag Garg s/o late Sri Raj Ratan r/o Shadhi Vihar,
Near Uttaranchal Ayurvedic College, Dehradun
..... Respondents

Sri D.S. Patni and Sri Munish Dalakoti, Advocate for the Appellant
Sri Kishor Kumar, Advocate for respondent no.3

Dated: September, 2006

**Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble Rajesh Tandon, J.**

Hon. Rajesh Tandon, J.

1) This is insurer's appeal against the Award dated 25.9.2004, passed by the Motor Accident Claims Tribunal, Dehradun.

2) The claimants Smt. Sarojini Garg and another preferred a claim petition under section 166 of the Motor Vehicles Act, for the grant of compensation on account of the death of Raj Ratan Garg in a motor vehicle accident. According to the claimants on the fateful day on 31.10.2001, the deceased was going from Dehradun to Rishikesh for the ring ceremony of his son by Maruti Car No. DL IC B 7408. The car was being driven by Dr. Y.S. Malik rashly and negligently, with the result when the vehicle reached near Mani-Mai, near Lachhiwala bridge the driver lost control over the vehicle and it dashed against a tree. The deceased sustained multiple injuries. He was taken to the C.M.I Dehradun, where he succumbed to his injuries on 2.11.2001.

3) Opposite parties 1 Col. R.S. Malik has admitted the facts of the accident and has submitted that the driver of the vehicle has valid driving licence.

4) The insurance company, appellant has admitted the insurance of the car but it has been denied that the accident had taken place due to negligence of driver of the offending vehicle. It has been denied that the income of the deceased was Rs.10,000/- per month.

5) Opposite parties no. 3,4,5, & 6 have filed their separate written statements. They have admitted the contents of the claim petition. They have also stated that they have no objection if the compensation is granted to the claimants.

6) In order to prove their case, the claimants have examined claimant No. 1 Smt. Abha Garg as P.W.1 and Dr. Rajeev Sharma as P.W.2. They have also filed copy of G.D. No. 23 dated 3.10.2001, Photostat copy of driving licence of Dr. Y.S. Malik and also filed cash memos, receipts, medical certificate,

death certificate and salary certificate of the deceased. Opposite party appellant has filed copy of insurance cover note.

7) On the basis of the evidence adduced by the claimants, the Claims Tribunal has held that the accident had taken place due to rash and negligent driving of Maruti Car No. DL IC B 7408 P.W.1 Smt. Abha Garg in her statement has stated that at the time of accident the car was being driven by Dr. Y.S. Malik. When the car reached near Lachhiwala bridge at Mani Mai Mandir on Hardwar Road, all of a sudden a wild animal came on the road and as the driver was driving the car at a high speed, he could not control the car and dashed against a tree. The statement of Smt. Abha Garg is uncontroverted on the record. The statement of P.W.1 Smt. Abha Garg further finds support by the report mentioned in the General Dairy of the police, copy of which is paper no. 6-C on the record.

8) So far as the compensation is concerned the Tribunal has recorded the finding that at the time of accident the age of the deceased was 76 years. The claims Tribunal held that the deceased was working as Administrator in Uttaranchal Ayurvedic College and was getting Rs.10,000/- per month as salary. Thus the annual income of the deceased was Rs.1,20,000/- and deducting 1/3 of the amount for self expenses of the deceased if he would have been alive, the annual dependency of the claimants on the income of deceased was held to be Rs.80,000/- per annum. Considering the age of the deceased a multiplier of 5 was selected and thus the amount of compensation was calculated as Rs.4,00,000/-. A sum of Rs.12,341/- was awarded towards expenses incurred in the treatment of deceased. Thus a total sum of Rs. 4,12,340/- was

awarded to the claimants along with pendent lite and future interest at the rate of 5% per annum.

9) Sri D.S. Patni, counsel for the appellant submitted that originally the claim petition was filed under section 163-A (1) of the Motor Vehicles Act, but later on by way of amendment it was converted as claim petition under section 166 of the Motor Vehicles Act and plea of rash and negligent driving was added and such the Claim Tribunal has erred in allowing the amendment application of the claimants. He has further submitted that the Tribunal has erred in assessing the compensation and that the amount of compensation paid to the claimants is excessive.

10) So far as the alleged conversion of the claim petition from under section 163-A (1) to under section 166 of the Motor Vehicles Act is concerned, the Claims Tribunal after inviting objections from the opposite parties allowed the application on 25.7.2003. The Claims Tribunal has held that the amendment application was formal in nature and it does not change the nature of the claim petition. The amendment was allowed on payment of Rs.100/- as costs and further opportunity was given to the opposite parties to file additional written statements. We do not find any illegality in the order passed by the Claims Tribunal allowing the application.

11) In the case of ***B.K.N Pillai Vs. P. Pillai and another*** ***2000 (38) ALR S.C. Page 338***, the Apex Court has observed as under:-

“The purpose and object of Order 6 Rule 17 CPC is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. The power to allow

the amendment is wide and can be exercised at any stage of the proceedings in the interests of justice on the basis of guidelines laid down by various High Courts and this Court. It is true that the amendment cannot be claimed as a matter of right and under all circumstances. But it is equally true that the courts while deciding such prayers should not adopt hyper technical approach. Liberal approach should be the general rule particularly in cases where the other side can be compensated with the costs. Technicalities of law should not be permitted to hamper the courts in the administration of justice between the parties. Amendments are allowed in the pleadings to avoid uncalled for multiplicity of litigation.”

12) The amendment cannot be refused only on the technical ground. The law regarding amendment is very much clear as has been held in ***M/s Estralla Rubber Vs. Dass Estate 2001(3) Civil Court Cases 663 (S.C.)*** after relying upon the judgment of ***B.K. Pillai v. Parameshwaran Pillai and another (2000) 1 SCC 712***. The apex court has observed as under:-

“3. The purpose and object of Order 6 Rule 17 CPC is to allow either party to alter or amend his pleading in such manner and on such terms as may be just. The power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interests of justice on the basis of guidelines laid down by various High Courts and this Court. It is true that the amendment cannot be claimed as a matter of right and under all circumstances. But it is equally true that the courts while deciding such prayers should not adopt a hyper technical approach. Liberal approach should be the general rule particularly in cases where the other side can be compensated with the costs. Technicalities of law should not be permitted to hamper the courts in the administration of justice between the parties. Amendments are allowed in the pleadings to avoid uncalled for multiplicity of litigation.”

13) The deceased was posted as Administrator in the Uttaranchal Ayurvedic College, Dehradun and was getting salary of Rs.10,000/- per month. The Claims Tribunal has rightly assessed his annual income at Rs.1,20,000/-. Considering the age of the deceased as 75 years multiplier of 5 has rightly been selected and thus after deducting 1/3 amount from the annual income of the deceased i.e. $1,20,000 - 40,000 =$ Rs.80,000/- has been worked out as annual dependency of the claimants on the income of the deceased. By multiplying annual dependency of Rs.80,000/- with 5 the compensation comes to Rs.4,00,000/-. The claimants have also submitted 12 bills for the expenses incurred in the treatment of deceased and the claims Tribunal has rightly awarded a sum of Rs.12,341/- in this count. The Claims Tribunal has awarded a total sum of Rs.4,12,340/- as compensation, which is just and proper.

14) The Apex court in the case **T.N. State Transport Corporation Ltd. Vs. S. Rajapriya and others. (2005) 6 SCC 236**. In paragraph 10, has observed as under:-

“10. Much of the calculation necessarily remains in the realm of hypothesis “and in that region arithmetic is a good servant but a bad master” since there are so often many imponderables. In every case “it is the overall picture that matters”, and the court must try to assess as best as it can the loss suffered.”

15) Thus we find that the amount of compensation assessed by the Claims Tribunal by applying appropriate multiplier is neither excessive nor exorbitant in the facts and circumstances of the case. Thus we find no infirmity or illegality in the order of the Tribunal.

15) The appeal, therefore, lacks merit and is hereby dismissed.

15) No order as to costs.

(Rajesh Tandon, J.)

(Rajeev Gupta, C.J.)

Dated: September 27, 2006

*Dhyani